COMMISSION REGULATION OF PUBLIC UTILITIES: A SURVEY OF LEGISLATION

By I. Leo Sharfman, A.B., LL.B.,
Junior Professor of Political Economy,
University of Michigan, Ann Arbor, Mich.

I. The Scope of Utility Legislation

In the early days of the development of public utility properties there was little or no regulation for the safeguarding of public welfare. In order to afford effective stimulus for inventive genius and business initiative it was necessary to provide a free field for private enterprise, unhampered by legislative restriction. The technique of utility operation, in which so high a degree of efficiency has now been attained, had yet to be worked out; and the permanent necessity and financial practicability of the utility services, which have now been recognized beyond recall, had yet to be established. In these monopolistic industries, as in private business, public welfare counseled a policy of *laissez-faire*. In spite of their monopolistic character, it was felt that the public service industries, in order to be ready for public control no less than for public ownership, must first have reached a stage of maturity consistent with the lessened opportunities for private gain necessarily involved in a system of effective public regulation. During the first half of the nineteenth century, therefore, franchise privileges were freely granted by the state legislatures. These franchises extended for long periods and often in perpetuity. As a result, the privileges essential for supplying the future, as well as the then-existing, needs of the city were given to private corporations with little thought of immediate restriction or of reservation of power for future regulation. The public service franchise was looked upon as a private contract between the state and the grantee corporation, instead of as a permit by the sovereign for the performance by private individuals or corporations of functions largely public in their nature.

Regulation by the states through administrative commissions of the type that prevails today is very recent. The Railroad Com-

mission of Wisconsin was not established until 1905 and it was not given jurisdiction over utilities other than railroads, express companies and telegraph companies till 1907. The public service commissions of New York were not established till 1907. The Wisconsin and New York commissions have served, to a large degree, as models for the numerous administrative bodies for the regulation of public utilities that have sprung into being since 1907; and the Wisconsin and New York laws have been the basis of a large mass of the public utility legislation recently enacted. These laws substitute administrative regulation for direct legislative control. Large powers are entrusted to special boards or commissions whereby they are enabled to keep themselves constantly and thoroughly informed of the practical operation as well as of the general policy of public service corporations, on the basis of which knowledge and information they exercise such supervision over these utilities as may tend to harmonize the private interests of the owners and the general welfare of the public. With but few exceptions, present-day utility regulation is legislative in character only in the sense that the extent of commission jurisdiction and power is determined by statutory enactment.

Now a complete résumé of utility legislation would include, in addition to the so-called commission laws, all special franchises and charters, with such restrictions as they contain, and all direct legislation imposing duties upon utilities for the enforcement of which no provision is made. A comprehensive survey of commission legislation even would include many laws whereby duties are imposed upon utilities by direct legislative enactment with power of enforcement vested in commissions. This paper deals almost exclusively with commission laws. Emphasis is here placed upon the organization and powers of commissions rather than upon the duties of utilities. Moreover, the discussion is limited to state commissions. Since the authority of the Interstate Commerce Commission extends primarily, if not entirely, to interstate business, it is given no consideration here, in spite of its large influence upon state commission legislation. Municipal commissions are likewise beyond the scope of this paper. Although there has been considerable American experience with municipal commissions, usually deriving their direct authority from municipalities and exercising jurisdiction over utilities whose business

is confined within these municipalities, the general trend of commission regulation is towards the establishment of central commissions whose authority is state-wide.[1]

II. THE ORGANIZATION OF COMMISSIONS

The success of commission regulation will depend largely upon the personnel of the commissions. Ultimately, the personnel of public service commissions will be determined by the attitude of the public towards its officials in general, and by the confidence or distrust which the public manifests towards the employment in the public service of trained experts and men of large business experience. This is one of the fundamental problems of American democracy, and it cannot be solved by mere legislation. But the effectiveness of commission regulation depends in large measure also upon political machinery; and this leads to a consideration of the important legislative requirements dealing with commission organization and procedure.

There are at the present time forty-eight state commissions, with independent personnel, representing forty-five separate jurisdictions.[2]

[1] The New York Public Service Commission for the first district is a state commission with limited territorial jurisdiction because of the special problems created by the dominating position of New York City.

[2] The following is a complete list of state railroad and public service commissions. Because of limited space no attempt is made to present a complete list of constitutional and statutory sources. All of the more important commission laws are given, and reference is made to such other provisions as deal with the creation and organization of commissions.

ALABAMA: Railroad Commission of Alabama (*Code 1907*, §§5632, 5633, 5636, 5637, 5640, 5642). ARIZONA: Corporation Commission (*Session Laws 1912*, ch. 90). ARKANSAS: Railroad Commission of Arkansas (*Kirby's Digest 1904*, §§6788, 6789, 6793). CALIFORNIA: Railroad Commission of the State of California (*Statutes 1911*, 1st extra session, chs. 14, 40). COLORADO: State Railroad Commission of Colorado (*Laws 1910*, special session, ch. 5). CONNECTICUT: Public Utilities Commission (*Public Acts 1911*, ch. 128). FLORIDA: Railroad Commissioners of the State of Florida (*Gen. Stats. 1906*, §§2882, 2883, 2887 [as amended 1907]). GEORGIA: Railroad Commission of Georgia (*Code 1911*, §§2616, 2620, 2621, 2622, 2625. *Acts 1878–79*, no. 269, §1). IDAHO: Public Utilities Commission of the State of Idaho (*Session Laws 1913*, house bill no. 21). ILLINOIS: State Public Utilities Commission (*Acts 1913*, house bill no. 907). INDIANA: Public Service Commission of Indiana (*Acts 1913*, house bill no. 361). IOWA: Board of Railroad Commissioners (*Code 1897*, §§2111, 2121). KANSAS:

Delaware, Utah and Wyoming are the only states which have no central commissions. New York, Massachusetts and South Carolina each has two distinct commissions.

Twenty-seven of the forty-eight commissions are appointed by the governor by and with the consent or advice of the senate or council; one is appointed by a railroad board, or a majority of its members, consisting of the governor, the lieutenant-governor, and the attorney-general; twenty are elected by the people. It is generally recognized that the appointive commission, all else being equal, is likely to call into the public service better and abler men than the elective commission. And there is a strong tendency towards the

Public Utilities Commission (*Gen. Stats. 1909*, §7185. *Laws 1911*, ch. 238). KENTUCKY: Railroad Commission (Constitution, §209. *Carroll's Statutes 1909*, §§821–823). LOUISIANA: Railroad Commission of Louisiana (Constitution, arts. 283, 287, 289). MAINE: Board of Railroad Commissioners (*Rev. Stats. 1903*, ch. 51, §48 [as amended by public laws 1909, ch. 141]; ch. 116, §1). MARYLAND: Public Service Commission (*Laws 1910*, ch. 180; *Laws 1912*, ch. 563). MASSACHUSETTS: Board of Gas and Electric Light Commissioners (*Rev. Laws 1902*, ch. 121, §1 [as amended by acts 1907, ch. 316]. *Acts 1910*, ch. 539, §1). Public Service Commission (*Acts 1913*, ch. 784). MICHIGAN: Michigan Railroad Commission (*Public Acts 1909*, no. 300). MINNESOTA: Railroad and Warehouse Commission (*Rev. Laws 1905*, §§1953 and 1956 [as amended by laws 1911, ch. 140, 1961]). MISSISSIPPI: Mississippi Railroad Commission (*Code 1906*, §§4826, 4828, 4830). MISSOURI: Public Service Commission (Public service commission law of March 17, 1913). MONTANA: Public Service Commission (Public service commission law of 1913). NEBRASKA: Nebraska State Railway Commission (*Cobbey's Annotated Statutes 1909*, §§10649, 10650). NEVADA: Railroad Commission of Nevada (*Statutes 1907*, ch. 44 [as amended by statutes 1911, ch. 193]); Public Service Commission of Nevada (*Statutes 1911*, ch. 162). The personnel of the two commissions is the same, the railroad commission being *ex officio* the public service commission. NEW HAMPSHIRE: Public Service Commission (*Laws 1911*, ch. 164). NEW JERSEY: Board of Public Utility Commissioners (*Laws 1911*, ch. 195). NEW MEXICO: State Corporation Commission (Constitution, art. XI, §1. *Laws 1912*, ch. 78). NEW YORK: Public Service Commission, First District (*Laws 1910*, ch. 480 [as amended through 1913]); Public Service Commission, Second District (same citation as for first district commission). NORTH CAROLINA: Corporation Commission (*Pell's Revisal 1908*, §§1054–1056, 1060, 2754). NORTH DAKOTA: Board of Railroad Commissioners of the State of North Dakota (Constitution, §82. *Rev. Codes 1905*, §§364, 366, 367. *Laws 1909*, ch. 216, §4). OHIO: Public Utilities Commission of Ohio (*Laws 1911*, no. 325. *Laws 1913*, house bill no. 582). OKLAHOMA: Corporation Commission (Constitution, art. IX, §§15, 16, 18 (a). Constitution, schedule §15). OREGON: Railroad Commission of Oregon (*Gen. Laws 1907*, ch. 53. *Gen. Laws 1911*, ch. 279). PENNSYLVANIA: Public Service Commission

appointive commission. Not only is a clear majority of the commissions appointive, but all the states which legislated during the past year created appointive commissions.[3]

The number of commissioners varies from three to seven. Thirty-eight commissions have three members; one has four; eight have five; one has seven. The term of office varies from two years in Arkansas and North Dakota to ten years in Pennsylvania. In five jurisdictions the tenure is three years; in six, four; in three, five; in thirty, six; in one, eight years. It is evident that the commissioners are generally being given a long enough tenure to make them expert in their work even if they are not so when they take office.

The compensation of commissioners varies from $1,500 in South Dakota to $15,000 in New York. In one commission the salary is $1,500 per annum; in one, $1,700; in one, $1,900;[4] in four, $2,000; in one, $2,200; in three, $2,500; in nine, $3,000; in one, $3,500; in nine, $4,000; in two, $4,500; in four, $5,000; in one, $5,500; in four, $6,000; in one, $7,500; in one, $8,000; in two, $10,000; and in two, $15,000. It will be noted that in fifteen commissions the salaries are $5,000 or over and in thirty-three they are less than $5,000. In nine commissions they are less than $2,500. In the recent legislation the tendency is to provide a reasonably adequate salary for the commis-

of the Commonwealth of Pennsylvania (*Laws 1913*, no. 854). RHODE ISLAND: Public Utilities Commission (*Acts 1912*, ch. 795). SOUTH CAROLINA: Railroad Commission (Constitution, art. IX, §14. *Gen. Stats. 1902*, §§2063, 2064. *Laws 1893*, no. 304, §1. *Laws 1910*, no. 286). SOUTH DAKOTA: Board of Railroad Commissioners of the State of South Dakota (*Rev. Pol. Code 1903*, §§186, 187, 189–191, 194, 195 [as amended by session laws 1907, ch. 208]). TENNESSEE: Railroad Commission of the State of Tennessee (*Acts 1897*, ch. 10. *Acts 1907*, ch. 390). TEXAS: Railroad Commission of Texas (Constitution, art. XVI, §30. *Sayles' Civil Statutes 1897*, art. 4561). VERMONT: Public Service Commission (*Public Statutes, 1906*, §§4591, 4592, 6172. *Laws 1908*, no. 116). VIRGINIA: State Corporation Commission (Constitution, §155). WASHINGTON: Public Service Commission of Washington (*Laws 1911*, ch. 117). WEST VIRGINIA: Public Service Commission (public service commission law of February 20, 1913). WISCONSIN: Railroad Commission of Wisconsin (*Laws 1905*, ch. 362 as amended. *Laws 1907*, chs. 499 as amended, 454, 578. *Laws 1911*, ch. 593. *Laws 1913*, ch. 756).

[3] Idaho, Illinois, Indiana, Massachusetts, Missouri, Montana, Ohio, Pennsylvania, West Virginia.

[4] In South Carolina the salary of the members of the railroad commission is $1,900 per annum; the members of the public service commission receive $10 a day when actually employed.

sioners. Illinois and Pennsylvania, for example, in their new laws, provide a salary of $10,000 for each of the commissioners; Massachusetts, $8,000; Ohio, Indiana and West Virginia, $6,000; Missouri, $5,500; and Idaho, $4,000.

In addition to the commissioners, provision is often made in the statutes for a secretary or clerk and for a special attorney to the commission. Such provision for a secretary or clerk is found in thirty-five jurisdictions, and for a special attorney in twenty-two jurisdictions. In some states the attorney-general is directed to act on behalf of the commission and to appoint such other counsel as may be necessary. In thirty jurisdictions the salary of the secretary or clerk is fixed by statute, varying from $1,200 to $6,000. In nine jurisdictions the salary of the attorney to the commission is fixed by statute, varying from $2,500 to $10,000. In most of the jurisdictions it is further provided that the commission may employ such subordinates as it deems essential for the adequate performance of its duties. The following provision from the recent Massachusetts public service commission law indicates the general tendency of commission legislation in the matter of subordinate employees: "The commission may appoint or employ such engineers, accountants, statisticians, bureau chiefs, division heads, assistants, inspectors, clerks and other subordinates as it may deem advisable on such terms of office or employment and at such salaries at it may deem proper."[5]

In eight jurisdictions commissioners must have special qualifications prescribed by statute. In Georgia one of the commissioners must be experienced in law, and one in the railroad business; in Kansas one must be "a practical, experienced business man," and one experienced in the management or operation of a common carrier or public utility; in Maine the chairman must be learned in law, one of the commissioners must be a civil engineer experienced in the construction of railroads, and one experienced in the management and operation of railroads; in Michigan one must be an attorney having a knowledge of and experience in the law relating to common carriers, and the other two must have a knowledge of traffic and transportation matters; in Nevada the chief commissioner must be an attorney at law well versed in the law of railroad regulation, the first associate commissioner must be a practical railroad man familiar with the operation

[5] *Acts 1913*, ch. 784, §9.

of railroads, and the second associate must have a general knowledge of railroad fares, freights, tolls and charges; in Virginia at least one commissioner must have the same qualifications as are required for judges of the supreme court of appeals; in West Virginia one of the commissioners must be a lawyer of not less than ten years' actual experience at the bar; and in Wisconsin one must have a general knowledge of railroad law, and each of the others must have a general understanding of matters relating to railroad transportation. In two jurisdictions the qualifications are very general in character. The new Massachusetts public service law provides that each of the commissioners shall be "a competent person;" and in South Carolina it is provided that the members of the public service commission shall be "reputable and competent citizens of South Carolina."

Most jurisdictions provide certain disqualifications for membership in a railroad or public utility commission. The disqualification provisions of forty jurisdictions, stated in composite form, provide that no person employed by or connected with or holding any official relation to or owning stocks or bonds of or having any direct or indirect or pecuniary interest in any public utility over which the commission has jurisdiction or of the kind over which the commission has jurisdiction is eligible to membership in the commission. In Wisconsin it is provided that no person who has a pecuniary interest in any railroad or telegraph or express company in Wisconsin or elsewhere may become a member of the commission. In twenty-six jurisdictions it is further provided that no commissioner, officer or employee of the commission may engage in any other business, employment or vocation, or hold any other political office. In Idaho and West Virginia the prohibition extends only to any other political office.

The determination of rules of procedure and practice is largely in the hands of the commissions. In two-thirds of the jurisdictions authority is specifically conferred upon the commissions to adopt rules and regulations for their government and proceedings. It is usually provided, however, that all hearings must be open to the public and that any party in interest may be heard in person or by attorney. On the other hand, authority is almost universally given to the commissions to administer oaths, subpoena witnesses and order the production of books, records and memoranda in proceedings held before them. Investigations and hearings are commonly started on

complaint, but it is often provided that the commission may make summary investigations and hold hearings on its own motion or initiative and issue orders on the basis of its findings.

III. THE GENERAL EXTENT OF COMMISSION AUTHORITY

The general extent of commission authority may be examined from three points of view. First, the scope and trend of regulation may be gathered from the number of commissions in existence and the rapidity of their growth. There are today, as already indicated, forty-eight state commissions, representing every state but Delaware, Utah and Wyoming. No less than thirty of these either came into existence since 1907 or, though in existence prior to that year, they have been so completely changed in character since 1907 that they are practically new commissions. Early in 1913 the National Civic Federation completed a comprehensive compilation and analysis of laws for the regulation of public utilities by central commissions.[6] In the single year that has elapsed since the results of that investigation were published, public service commissions have been created in two states, Idaho and West Virginia, where no utility commissions had before existed, and seven other states have passed complete public service laws now in operation.[7] In addition there has been a mass of amendatory legislation whereby already existing commissions have been very largely transformed.

The extent of commission authority may also appear from a consideration of the kind and number of utilities which may be reached in any way by the utility commissions. These commissions collectively have some degree of authority over corporations, companies, associations, joint stock companies, partnerships or individuals owning, operating, managing or controlling steam railroads, electric and street railways, interurban or suburban railways, elevated railroads or subways, automobile railroads, steamboats and other water craft, express lines and messenger lines, signalling facilities, bridges and

[6] *Commission Regulation of Public Utilities: A Compilation and Analysis of Laws of Forty-three States and of the Federal Government for the Regulation by Central Commissions of Railroads and Other Public Utilities.* The National Civic Federation, Department on Regulation of Interstate and Municipal Utilities, New York, 1913.

[7] See footnote 3.

ferries connected with railroads, pipe lines for the transportation of oil or water, sleeping, parlor and drawing-room cars, terminals, union depots, docks, wharves, storage elevators, fast freight lines, stage lines, messenger companies, telegraph and telephone companies, facilities for the manufacture and sale of gas or electricity, heat, light, water, power, hot or cold air or steam, and irrigation and sewage facilities. Whether a given business constitutes a public service undertaking depends largely upon the social and industrial conditions that prevail in the community. Whether, upon recognition of a given undertaking as a public service industry, express authority to regulate shall be granted to commissions, depends usually upon the public policy of the given community and more particularly upon the political conditions prevailing in that community. Therefore the utilities to which commission jurisdiction extends vary greatly in the different states; but the principles of adequate regulation, as embodied in the various powers conferred upon commissions, are found to depend but very slightly upon the number and nature of the utilities regulated. This is but a recognition that public service industries may, in most respects, be treated as a homogeneous class. A distinction is often made between interstate and municipal utilities, or between railroads and other public utilities. Commission legislation but seldom distinguishes to any striking degree between these classes of utilities, although there is considerable variety in the names of the commissions. Twenty-two of them are railroad commisssions; twelve are public service commissions; seven are public utility commissions; five are corporation commissions; one is a railroad and warehouse commission; and one is a board of gas and electric light commissioners. The names of the commissions do not always indicate the scope of their jurisdiction. Many of the railroad commissions have jurisdiction over the so-called municipal utilities: as, for example, the railroad commissions of Oregon and Wisconsin. And most of the public utility or public service commissions have jurisdiction over railroads: as, for example, the Massachusetts and New York commissions.

Finally, the extent of commission jurisdiction may be gathered from the powers vested in the commissions. Two types of regulating boards have appeared in American experience: the advisory board, with powers of investigation and recommendation, of which the old Massachusetts railroad commission is the most notable example, and the

mandatory board, with power to order as well as to recommend, of which the New York and Wisconsin commissions are perhaps the best examples. The advisory commission relies upon publicity and the strength of public opinion for the enforcement of its recommendations; the mandatory commission is vested with sufficient power to compel the utilities to submit to its orders.

The advisory commission has been abandoned even in Massachusetts. Large powers are now granted to the commissions; the duty of utilities to comply with the orders of the commissions is clearly stated; the commissions are given authority to invoke judicial process for the enforcement of their orders; and usually penalities, varying in stringency, are imposed upon utilities for failure to comply with these orders. Since the enactment of the Wisconsin railroad commission law in 1905 and of the Hepburn amendments to the act to regulate commerce in 1906, practically all utility legislation has proceeded on the basis of clothing commissions with ample power to exercise continuous supervision over public utilities and to afford effective relief to any party in interest whenever necessary. The authority to prescribe just and reasonable rates, therefore, is almost universally enjoyed by the modern type of public service commission. But in addition to such specific powers as are necessary for adequate public control, commissions now possess large general powers of investigation and supervision over the property and business of public utilities.

This general power of regulation is stated in most comprehensive fashion in the Illinois public utilities commission law. It is there provided that

> The commission shall have general supervision of all public utilities, shall inquire into the management of the business and shall keep itself informed as to the manner and method in which the business is conducted. It shall examine such public utilities and keep informed as to their general condition, their franchises, capitalization, rates and other charges, and the manner in which their plants, equipments and other property owned, leased, controlled or operated are managed, conducted and operated, not only with respect to the adequacy, security and accommodation afforded by their service but also with respect to their compliance with the provisions of this act and any other law, with the orders of the commission and with the charter and franchise requirements.[8]

The following provision of the Wisconsin public utilities act is found in most jurisdictions, and indicates the nature of the powers

[8] *Acts 1913*, house bill no. 907, §8.

vested in commissions in so far as they are essential to a proper performance of their duties:

> The commission or any commissioner or any person or persons employed by the commission for that purpose shall, upon demand, have the right to inspect the books, accounts, papers, records and memoranda of any public utility and to examine, under oath, any officer, agent or employee of such public utility in relation to its business and affairs.[9]

IV. THE POWERS OF UTILITY COMMISSIONS

We may now present a brief résumé of the more important specific powers vested in public utility commissions.

1. Franchises

The important provisions in commission laws looking to franchise regulation aim to prevent unnecessary duplication of utility properties through the introduction of competition where the public welfare demands the recognition of monopoly, and to provide for the uninterrupted operation of utilities, under adequate control of rates and service, subject to municipal purchase whenever such private operation ceases to promote the public good.

The first of these purposes has been accomplished by requiring the issue of a certificate of convenience and necessity by the commission before a public utility may enter upon a new undertaking or extend an existing undertaking or exercise franchise privileges previously granted but not theretofore exercised. The essential elements of the certificate of convenience and necessity are stated as follows in the New Hampshire public service commission law:

> No public utility shall commence within this state the business of transmission of telephone or telegraph messages or of supplying the public with gas, electricity or water, or shall engage in such business or begin the construction of a plant, line, main or other apparatus or appliance intended to be used therein in any city or town in which at the time it shall not already be engaged in such business, or shall exercise any right or privilege under any franchise hereafter granted (or any franchise heretofore granted but not heretofore actually exercised) in such town, without first having obtained the permission and approval of the commission. The commission shall grant such permission whenever it shall, after due hearing, determine and find that such engaging in

[9] *Laws 1907*, ch. 499, §1799m–38.

business, such construction or such exercises of the right, privilege or franchise would be for the public good and not otherwise; and may prescribe such terms and conditions upon the exercise of the privilege granted under such permission as it shall consider for the public interest. Authority granted under provisions of this section may only be exercised within two years after the same shall be granted and shall not be exercised thereafter.[10]

Provisions substantially identical with the New Hampshire section are found in nineteen jurisdictions.[11] It is to be noted that practically all the states which passed complete laws during 1913 provide for certificates of convenience and necessity.

The other purpose of the franchise provisions of commission laws is to recognize the essentially monopolistic character of public utilities by providing for their continuous operation, during good behavior, under a permit unlimited as to time, with power in the municipality to exercise an option of purchase. The indeterminate franchise was first established in Massachusetts, where street railway locations may be revoked by local authorities (the revocation being subject to approval by the commission in certain cases) at any time after the expiration of one year from the date of the franchise. The most thorough-going indeterminate franchise law is to be found in Wisconsin. It was enacted in 1907 and materially amended in 1911.[12] It provides for indeterminate permits for street railways and for heat, light, water and power companies in municipalities. The indeterminate permit was first to apply to all future grants, with authority for companies operating under limited-term franchises to exchange them for indeterminate permits. The amendment of 1911 provided that all franchises theretofore granted were to become indeterminate. The essential characteristics of the principle of indeterminate franchises are: first, that the public service corporation is recognized as a legal monopoly and no permit is granted to a competing company unless public convenience and necessity require such grant; and second, that the public service company, in accepting an indeterminate permit, consents to the purchase of its plant by the municipality in which it operates. The purchase price is to be

[10] *Laws 1911*, ch. 164, §13 (a).

[11] Arizona, California, Connecticut, Idaho, Illinois, Indiana, Kansas, Maine, Maryland, Massachusetts, Michigan, Missouri, New Hampshire, New York, Pennsylvania, South Dakota, Vermont, West Virginia, Wisconsin.

[12] *Laws 1907*, ch. 499, §§1797m–74 to 1797m–86. *Laws, 1907*, ch. 578, §§1797t–1 to 1797t–12. *Laws 1909*, chs. 180, 213. *Laws 1911*, chs. 546, 596, 662.

fixed by the commission, subject to review by the courts. The new public service commission law of Indiana provides for indeterminate permits similar to those established in Wisconsin.[13]

2. Security Issues

In fifteen jurisdictions the commission has authority to supervise the issue of stocks and bonds.[14] In some of these jurisdictions the commission's power is stated in general terms and does not provide for a strict control of capitalization. The New Jersey law, for example, merely provides that no public utility shall

> issue any stocks, stock certificates, bonds or other evidences of indebtedness payable in more than one year from the date thereof until it shall have first obtained authority from the board for such proposed issues. It shall be the duty of the board, after hearing, to approve of any such proposed issue maturing in more than one year from the date thereof, when satisfied that the same is to be made in accordance with law and the purpose of such issue be approved by said board.[15]

In many of the states, however, the commission has complete control, definite financial standards being prescribed and provision being made for thorough investigation and valuation by the commission before approval of security issues, and for detailed supervision of the disposition of the proceeds after the commission's certificate has been granted. The Wisconsin stock and bond law,[16] applying to railroads, street railway, telegraph, telephone, express, freight line, sleeping car, light, heat, water and power corporations, establishes the most comprehensive system of regulation of security issues by commission. It affords a practical guarantee by the state that there is an equivalence between the amount of outstanding securities and the investment upon which the utilities are entitled to a fair return. Legislation of similar scope may be found in five other states, three of which legislated during the past year.

[13] *Acts 1913*, house bill no. 361, §§100–109.

[14] Arizona, California, Kansas, Illinois, Indiana, Massachusetts, Michigan, Missouri, New Hampshire, New Jersey, New York, Pennsylvania, Texas, Vermont, Wisconsin.

[15] *Laws 1911*, ch. 195, §18(e).

[16] *Laws 1911*, ch. 593.

3. Rates and Service

Commission laws lay down the basis of rate-making, or the requisites of lawful rates, declare unjust discrimination unlawful, prescribe publicity in the making of rates and schedules, and vest in commissions the power to fix rates in accordance with the principles thus prescribed.

It is almost invariably provided that rates and charges must be just and reasonable, and the commissions are given authority to enforce the standard thus established. In many jurisdictions the various elements that must be considered and the various devices that may be adopted in the establishment of reasonable rates by utilities and commissions are further prescribed. The chief elements emphasized by the statutes for lawful rates are that a due regard be had "to a reasonable average return upon the value of the property actually used in the public service and of the necessity of making reservation out of income for surplus and contingencies."[17] Twenty-four jurisdictions make express provision for valuation of the property of public utilities by commissions.[18] These valuations are sometimes used for capitalization and purchase as well as for rate-making purposes. The tendency in these valuation provisions is to vest in commissions ample power for the successful ascertainment of utility valuations. Such elaborate valuation provisions may be found in Ohio,[19] Pennsylvania,[20] Washington[21] and Wisconsin.[22] The main device provided by statute by which reasonable rates may be secured is the sliding scale, chiefly applicable to the gas industry, but also, in some cases, to electric companies. In addition to the Boston sliding scale act in Massachusetts,[23] nine jurisdictions author-

[17] New York: *Laws 1910*, ch. 480, §97.

[18] Arizona, Arkansas, California, Florida, Georgia, Illinois, Indiana, Kansas, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, New Jersey, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Texas, Washington, West Virginia, Wisconsin.

[19] *Laws 1913*, house bill no. 582, §§21–31.

[20] *Laws 1913*, no. 854, art. II, §1 (k); art. III, §§4 (a), 6; art. V, §§19–23.

[21] *Laws 1911*, ch. 117, §92.

[22] *Laws 1907*, ch. 499, §§1797m–5, 1797m–6, 1797m–19, 1797m–82 to 1797m–86. *Laws 1907*, ch. 578, §1797t–8. *Laws 1911*, ch. 662.

[23] *Acts 1906*, ch. 422.

ize utilities to establish the sliding scale for the automatic adjustment of charges and dividends under commission supervision.[24]

It is almost invariably provided also that unjust discrimination is prohibited, and the commissions are given authority to enforce the prohibitions. Unjust discrimination is variously defined. As defined in the commission laws collectively it consists in charging a greater or less compensation to one person than to another for like and contemporaneous service; in charging rates other than those prescribed by law or specified in published schedules, refunding, remitting or rebating any portions of such rates, or extending privileges or facilities not uniformly open to all; in charging a less compensation in consideration of the furnishing by utilities of any part of the facilities incident to the service; in charging a less compensation in consideration of the size of the shipment or the extent of the service; in charging a greater compensation for a shorter than for a longer distance or for a smaller than for a larger service; in granting to any person, corporation, locality or any particular description of service any undue or unreasonable preference or advantage, or in subjecting the same to any undue or unreasonable prejudice or disadvantage; in assisting or permitting patrons to secure special favors or advantages, or rates other than those lawfully established; in soliciting, accepting or receiving special favors or advantages, or rates other than those lawfully established. There are also general prohibitions against offering, granting, soliciting or accepting free or reduced rate or special service, with elaborate lists of exceptions; special prohibitions, applicable to public officials and members of political organizations; and requirements that lists of persons to whom free or reduced rate or special service has been granted shall be published and filed with the commission. The provisions also indicate the kinds of special treatment which constitute justifiable discrimination and authorize the commissions to determine under what conditions such circumstances exist as make discrimination justifiable.

Again, it is almost invariably provided that utilities submit to full publicity in the establishment and change of their rates and schedules, and authority is vested in the commissions to render publicity in rate-making effective. Utilities are thus ordered to file their schedules of rates with the commissions, after due notice of their

[24]Arizona, California, Idaho, Maryland, Missouri, New York, Ohio, Pennsylvania, Wisconsin.

adoption; the matters to be contained in these schedules are prescribed in detail; the forms of schedules are made subject to the approval of commissions; it is provided that the schedules be published and posted; the filing, publishing and posting of rate schedules are often made a condition precedent to the exercise by utilities of the right to do business; and utilities, in many instances, are required to file with the commissions copies of leases, contracts and arrangements made with other utilities.

The most important powers as to rates are found in the provisions which authorize commissions to regulate or prescribe the rates and charges of utilities, establish the procedure to be followed in the exercise of these powers, and indicate the legal effect to be given to the rates and charges so established. All of the states now give the commissions mandatory powers over rates. In many of the jurisdictions there is language so broad that it may, by liberal interpretation, be construed to vest in the commissions power to fix rates in the first instance. When the legislation in each jurisdiction is taken as a whole, however, the authority of the commissions in practically all of the commission states is limited to the power on its own motion or on complaint, after investigation, to declare unreasonable rates and charges previously in force, and to prescribe others in lieu thereof to be followed in the future. In other words, in spite of the large power over rates vested in commissions, the right to initiate rates is practically everywhere reserved to the utilities; but in about one-third of the jurisdictions the commissions are given the additional authority to suspend the operation of rates fixed by utilities pending an investigation as to their reasonableness undertaken by the commissions. In some jurisdictions the rates fixed by commissions are considered *prima facie* lawful and in force until found unreasonable upon review by a proper court; in some states their operation is suspended until declared reasonable upon judicial review.

Many of the rate provisions, in so far as they empower commissions to supervise the business of utilities, apply to regulations, practices and service. But while more than one-half of the states provide that the service furnished by utilities must be reasonable or that the facilities must be adequate and safe, only about one-third of the commission jurisdictions vest sufficient authority in the commissions to render these requirements effective. The practice in the past has been to establish by direct legislative enactment absolute standards

of service and safety, and specific facilities and safety appliances. The present tendency, however, as evidenced by much of the recent legislation,[25] is to clothe commissions with power over service and facilities, both as to adequacy and safety, commensurate with their power over rates. The more recent commissions, therefore, are authorized to prescribe reasonable service standards and to provide for such inspection and testing of service and facilities as will insure their adequacy and safety.

4. Accounts and Reports

The regulation of accounts and reports serves to provide for commissions the data essential to an adequate control of capitalization, rates and service.

There are provisions for the regulation of accounts in twenty-eight jurisdictions. The most general requirement is that by which authority is granted to commissions to establish a system of uniform accounts for public utilities, with power to prescribe the forms of accounts, records and memoranda and to indicate the manner in which they shall be kept, or to classify public utilities and establish a system of accounts and prescribe forms for each class. In most jurisdictions this power may be exercised in the discretion of the commission. Sometimes, as in the new Indiana law, the authority to prescribe accounting practices is made mandatory upon the commission.[26] In a number of the jurisdictions it is further made unlawful for utilities to keep any other accounts, records or memoranda than those prescribed or approved by the commission. In the case of common carriers, the commissions are often specifically required to conform, as far as possible, to the system and form of accounts established and prescribed from time to time by the Interstate Commerce Commission. In about one-fourth of the states—Arizona,[27] California,[28] Idaho,[29] Illinois,[30] Indiana,[31] Missouri,[32] New Jersey,[33]

[25] Idaho, Illinois, Indiana, Missouri, Pennsylvania, West Virginia.
[26] *Acts 1913*, house bill no. 361, §15.
[27] *Session Laws 1912*, ch. 90, §49.
[28] *Statutes 1911*, 1st extra session, ch. 14, §49.
[29] *Session Laws 1913*, house bill no. 21, §47.
[30] *Acts 1913*, house bill no. 907, §14.
[31] *Acts 1913*, house bill no. 361, §§22–25.
[32] Public service commission law of March 17, 1913, §61.
[33] *Laws 1911*, ch. 195, §17 (*f*).

Ohio,[34] Oregon,[35] Pennsylvania,[36] Wisconsin[37]—special depreciation accounts are provided for: the commission is empowered to require proper and adequate depreciation or deferred maintenance accounts to be kept in accordance with prescribed forms and regulations whenever it shall determine that depreciation accounts can reasonably be required. And the commissions are given authority to examine as well as to prescribe accounts; that is, the commission or the commissioners or their duly authorized agents or examiners may have access to the accounts of the utilities and may at all reasonable times examine and inspect them. Heavy penalties are usually imposed for violations of accounting provisions.

The duty is almost invariably imposed upon utilities to transmit to the commission at specified intervals or at such time as the commission may designate, regular reports of their doings setting forth such facts, statistics and particulars relative to their business, receipts and expenditures as may be required by the commission. In many states special reports may also be called for by the commission at different intervals. It is often provided that the commission shall furnish blank forms for regular or special reports; and the reports must be duly sworn to or verified by such officers or persons as the commission may designate. Full and specific answers must be given to all questions propounded by the commission, or sufficient reasons must be stated for failure to make such answers. In case the reports or returns appear to be defective or erroneous, the commission is usually given the power to order their amendment within a specified time. It was very common in the older utility laws, particularly for the regulation of railroads and common carriers, to prescribe by statute the detailed contents of annual reports; but in pursuance of the general trend of giving commissions ample discretion in the regulation of utilities, the more advanced legislation, including most of the recent laws, vests complete power in the commissions as to the scope of the reports of utilities. Heavy penalties are usually imposed for the violation of provisions relating to reports.

[34] *Laws 1911*, no. 325, §§51, 52.
[35] *General Laws 1911*, ch. 279, §17.
[36] *Laws 1913*, no. 854, art. II, §1(i); art. V, §15.
[37] *Laws 1907*, ch. 499, §1797m-15.